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In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 870

R. E. COLLINS, JOHN C. CORBETT, and FRED B. STEWART, et al.,
Appellants,

vs.

YOSEMITE PARK AND CURRY CO.,
Appellee.

BRIEF FOR APPELLEE

HERMAN PHLEGER,
MAURICE E. HARRISON,
GREGORY A. HARRISON,
JAMES S. MOORE, JR.,
Attorneys for Appellee.

BROBECK, PHLEGER & HARRISON,
Of Counsel.

PARKER PRINTING COMPANY, 545 SANSOME STREET, SAN FRANCISCO

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Appellants,

vs.

YOSEMITE PARK AND CURRY CO.,
Appellee.

BRIEF FOR APPELLEE

THE ISSUE.

The essential issue in this case is whether the State of California has power to regulate the importation to and sale of alcoholic beverages within the Yosemite National Park. A series of statutes hereinafter referred to purport to cede from California to the United States exclusive juris-

All emphasis in quotations herein has been supplied.
References R. ..... are to the printed record on appeal.

diction over the Yosemite Valley,* and, as to the remainder of the Park, exclusive jurisdiction with reservation only of certain taxing powers. The State now contends that the United States could not constitutionally accept or exercise such exclusive jurisdiction and that the reserved taxing powers warrant the exercise by the State of a complete scheme of regulation of the traffic in alcoholic beverages. The lower court held that the United States may exercise exclusive or limited jurisdiction over national parks by voluntary cession from the state; that as to Yosemite Valley the jurisdiction was ceded without reservation, and that as to the balance of the Park the reserved taxing powers do not justify the enforcement within the Park of the regulatory powers of California. It also held that the Alcoholic Beverage Control Act of California is primarily a regulatory measure and its taxing features are inseparable therefrom.

The case does *not* involve any attempt on the part of appellee to escape regulation. Appellee operates within the Park under minute regulation of the Secretary of the Interior. It has long been the policy of the National Park Service to exclude from the Parks purely commercial enterprises and to insure adequate facilities and accommodations for visitors to the Park through concessionaires operating under the direct supervision and regulation of the federal authorities. Appellee operates its facilities under such a contract. It is confronted with conflicting regulations of the federal and state authorities, and the

*The term "Yosemite Valley" is used herein to refer to the area approximately four miles long and one mile wide described in the act of June 11, 1906, and commonly so designated. It is but a small part in area of Yosemite National Park, although the greater part of the Company's facilities exist within the Valley.

lower court properly held that the federal control of the Company's operations is paramount.

In the lower court the United States Attorney appeared *amicus curiae* in support of appellee's position.

Appellants are the members of the State Board of Equalization (herein called "the Board") and the Attorney General of California, and as such are charged with the enforcement of the Alcoholic Beverage Control Act of California (Cal. Stats., 1935, p. 1123, 1937, pp. 1934, 2126). They have appealed from a final decree of the District Court enjoining interference with plaintiff's possession and sale of alcoholic beverages in Yosemite National Park and interference with the importation of such beverages by plaintiff from points outside California into the Park.

The facts are not disputed, the case having been heard on the verified bill of complaint and defendants' motion to dismiss. The District Court rendered an opinion on hearing of the motion for an interlocutory injunction (20 Fed. Supp. 1009). The opinion appears at page 39 of the record.

Following the rendition of this opinion, the case was submitted for final decision and the Court made its findings of fact and conclusions of law (R. 31) and rendered a decree in accordance with the findings (R. 37). A direct appeal was taken to this Court under Section 266 of the Judicial Code (28 *U. S. C.*, Sec. 380).

STATEMENT OF THE CASE.

As shown by the complaint, plaintiff and appellee (hereinafter called "the Company") operates in Yosemite National Park certain hotels, camps, restaurants and stores, at which alcoholic beverages are sold, for consumption either on or off the premises. These operations are all conducted pursuant to a contract between the Company and the Secretary of the Interior of the United States (Ex. A to the complaint, R. 8). The Company is not engaged in the alcoholic beverage traffic, except in Yosemite National Park.

By the contract, the Company is obligated to provide all necessary accommodations and facilities for the entertainment and care of visitors to the Park, to supply additional facilities as deemed necessary by the Secretary, and to conduct its operations in the manner prescribed by the Secretary. The contract is dated October 1, 1932, and extends for a 20-year term, and the Company is authorized to occupy certain government lands in its performance, under restrictions therein stated. It is expressly provided (R. 15) that the Company will conduct its operations "in such manner, as the Secretary shall deem in every respect satisfactory and designed to promote the object for which the Park was created and established." The contract was accepted by the Company "with the knowledge that the park is intended by Congress to be preserved in its natural state, and that all private interests shall be excluded from it, except so far as may be necessary for the accommodation of the public" (R. 20), and the Company agrees faithfully to keep and observe "each and every provision in this contract or in any Act of Con-

gress or any rule, order or regulation concerning the park, its use, care, management or government, or anything in it" (R. 21).

The Company's charges are required to be approved by the Secretary, who has power to make alterations and modifications thereof (R. 21). The Company's records are required to be kept as desired by the Secretary (R. 21), and the Secretary is given final and conclusive power to determine whether there has been a failure or default on the part of the Company (R. 22). It is provided that the Company shall pay a fixed annual sum to the Secretary as compensation for the franchises and leases granted, and additional compensation based on a percentage of distributed net profits (over a 6% return on the investment) for the first 10 years and a percentage of earned net profits, whether or not distributed, after the 6% priority, during the second 10 years of the term. In determining the Company's profits the Secretary is empowered to determine the propriety of any item of expense incurred by the Company, and his decision thereon is final (R. 15-20).

As appears from the bill, the Secretary has directed the Company not to apply for or take the licenses provided by the Alcoholic Beverage Control Act of California in respect of its operations in the Park under the contract, and has informed the Company that any charges therefor or taxes levied pursuant to that act will not be allowed as operating expenses for purposes of the contract (R. 2, 4).

It further appears that defendants, believing that the Company's operations are subject to the act, have threatened to seize alcoholic beverages consigned to the Com-

pany in Yosemite National Park from points outside California while in transit through the State, and have threatened to enter the Park and there seize, under purported authority of the act, alcoholic beverages held by the Company for purposes of sale pursuant to its contract with the Secretary. Defendants threaten to invoke divers civil and criminal penalties for violation of the act, to require the keeping of accounts in the form prescribed by the Board, and otherwise to subject the Company to all the obligations of the act (R. 3). It further appears that such action on the part of the defendants would prevent performance by the Company of its contract with the Secretary (R. 3); that the property of the Company threatened to be seized is of the value of more than $3,000 (R. 2), and that the Company would suffer great and irreparable injury and has no adequate remedy at law (R. 5).

HISTORY OF YOSEMITE NATIONAL PARK AND STATUTES INVOLVED.

Prior to June 30, 1864, the entire area now comprising Yosemite National Park was public land of the United States, having been acquired by the treaty with Mexico (9 Stats. 922). When California was admitted to the Union (9 Stats. 452), political jurisdiction was not retained by the United States, so that the interest of the United States was merely proprietary. In 1864 (13 Stats. 325) title to the cleft or gorge known as Yosemite Valley and to the Mariposa Grove of Big Trees was transferred to the State of California in trust for park and recreational purposes, and this trust was administered by the State until 1906. There is no question that during this

period the entire area was subject to the political jurisdiction of California. Meanwhile, in 1890, a large area surrounding Yosemite Valley was withdrawn from entry and sale (26 Stats. 650), and in 1905 was designated Yosemite National Park (33 Stats. 702). The political jurisdiction of California in this area prior to 1919 is likewise unquestioned.

The Yosemite Valley and Mariposa Grove were regranted and receded to the United States by the California Legislature in 1905 (Cal. Stats. 1905, p. 54, set forth in Appendix, p. i). The regrant was accepted by Congress on June 11, 1906 (34 Stats. 831, set forth in Appendix, p. ii). These acts by themselves merely served to transfer title to the Valley and Grove, but there was then in effect, and still is, the act of the California Legislature (Cal. Stats. 1891, p. 262, set forth in Appendix, p. iv), which ceded exclusive jurisdiction to the United States over all lands which may have been or might thereafter be "ceded or conveyed to the United States, during the time the United States shall be or remain the owner thereof," subject to no reservations except the right to serve process.

The District Court held that when Yosemite Valley was regranted to and accepted by the United States, exclusive jurisdiction thereby became vested in the United States, by virtue of the effect of the 1891 statute, without reservation to California of any political jurisdiction other than the right to serve process within the Valley (R. 35, 42).

In 1919, the California Legislature passed a further statute (Cal. Stats. 1919, p. 74, set forth in Appendix p. iv), which ceded exclusive jurisdiction to the United

States over the Yosemite, Sequoia and General Grant Parks, saving the right to serve civil process and the right of residents to vote at state elections, and

> "* * * saving further, to the said state the right to tax persons and corporations, their franchises and property on the lands included in said parks, and the right to fix and collect license fees for fishing in said parks."

By the act of June 2, 1920 (41 Stats. 731, Section 1 of which is set forth in Appendix, p. v), this offer was accepted by Congress, with a saving clause respecting taxation and fishing license fees in practically the words of the California statute.

The District Court held that this act applied only to the portion of Yosemite National Park outside Yosemite Valley and to the Sequoia and General Grant Parks therein referred to; that it was ineffective to diminish the exclusive jurisdiction over the Valley vested in the United States since 1906, and further, that the reserved jurisdiction of California under the 1920 act was insufficient to empower defendants to enforce within Yosemite National Park or in respect of imports thereto, the provisions of the Alcoholic Beverage Control Act of California, since the act was found to be primarily a police measure, enforcement of which was inconsistent with the jurisdiction ceded by the 1919 act. It was further found that the tax features of the Alcoholic Beverage Control Act were so inextricably interwoven with the regulatory features that they could not be enforced against the Company (R. 49).

CONSTITUTIONAL PROVISIONS INVOLVED.

Appellants, as we understand their claim, contend that the United States cannot constitutionally accept, and that California cannot constitutionally grant, exclusive political jurisdiction over areas used solely for national park purposes or for any other purpose than those specified in Article I, Section 8(17) of the United States Constitution, which reads as follows:

> "The Congress shall have power * * *
>
> "17. To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings."

Appellants further base their claim on the provisions of Article XIII, Section 6, of the California Constitution, which provides:

> "The power of taxation shall never be surrendered or superseded by any grant or contract to which the state shall be a party."

It is our position that neither provision relied on by appellants governs this case, and we find authority for the exercise of jurisdiction in respect of territory ceded to the Federal government, irrespective of the purpose for which ceded, not only in the inherent power of sovereignty,

but also in Article IV, Section 3(2) of the Constitution, which reads:

> "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state."

Appellants also rely on the second section of the Twenty-first Amendment to the Constitution as revesting in California regulatory powers over traffic in alcoholic beverages, *irrespective of the effect of preceding cession* of jurisdiction. That section provides:

> "The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

We contend that the Twenty-first Amendment operates only within the states and does not serve to revest in any state jurisdiction over any area ceded to the United States. The District Court so held in this case (R. 15).

THE ALCOHOLIC BEVERAGE CONTROL ACT OF CALIFORNIA.

The Alcoholic Beverage Control Act of California is a complete scheme of regulation of the liquor traffic administered by the State Board of Equalization. It defines and provides for the licensing of all types of dealers in alcoholic beverages and prohibits unlicensed persons from engaging in that traffic. The act prohibits the issuance of licenses for importation from other states except to li-

censed wholesalers and further prohibits the holding by wholesalers of retail licenses and vice versa.*

Minute regulations are prescribed as to the method of applying for and obtaining licenses; the suitability of the premises for such purposes being within the discretion of the Board; notice of application is required to be posted on the premises, and published. Licenses (except for the sale of beer) may not be issued outside of city limits for premises within 4 miles of camps of 25 or more men engaged in public works. The Board is empowered to prescribe accounting systems, to require the preservation of records, and to enter upon and examine the premises of licensees. The hours of sale and delivery are regulated, and large discretion is vested in the Board, including the power to fix the license fee for sale of distilled spirits for consumption on the premises.

Section 1 of the act provides that "this act shall be deemed an exercise of the police powers of the State * * *." The taxes imposed by the act are by its terms imposed upon licensees and on no other persons, since other persons are prohibited from engaging in any act for which a license is provided. Illustrative is the tax on distilled spirits, imposed by Section 24 of the Act, in the following terms:

> "An excise tax is hereby imposed upon all distilled spirits sold in this State by rectifiers or wholesalers thereof * * *."

---

*The text of the Alcoholic Beverage Control Act, as amended, is set forth in Exhibit A to the Jurisdictional Statement filed under Rule 12.

Section 33 provides the mechanics for the collection of this tax as follows:

> "Sec. 33. The tax imposed by section 24 of this act upon the sale of distilled spirits shall be collected from rectifiers and wholesalers of distilled spirits and payment of the tax shall be evidenced by stamps issued by the board to such rectifiers and wholesalers. In exceptional instances the board may sell such stamps to on- and off-sale distilled spirits licensees and other persons. No rectifier or wholesaler of distilled spirits, shall purchase distilled spirits excise stamps, except from the board or its duly authorized agents, nor dispose of such excise stamps except to on- or off-sale distilled spirits licensees when making sales of distilled spirits to such licensees as provided in section 32b."

Section 49 prohibits the bringing into the State of alcoholic beverages consigned to any person other than a licensed importer. Thus it appears that the taxing features of the Act are directed only to licensees, and the District Court found that they were inseparable from the regulatory provisions.

It should further be noted that Section 66 of the act provides that shipments of alcoholic beverages in transit through the State "for delivery or use without this State" are not subject to the provisions of the act.

ARGUMENT.

Outline of Argument.

I. The Twenty-first Amendment has no application in this case.

II. The United States has constitutional power to exercise exclusive jurisdiction over areas devoted to National Park purposes.

A. The California Constitution does not prevent cession of such jurisdiction.

III. Enforcement of the California Alcoholic Beverage Control Act in Yosemite National Park is not within the power saved to California by the Act of June 2, 1920.

A. The taxing features of the Alcoholic Beverage Control Act are applicable only to persons subject to the police power of California and cannot be separated from the regulatory features of the Act.

IV. The United States has exclusive jurisdiction over Yosemite Valley without any reservations.

V. Imposition of the taxes levied by the Act is not within the scope of the power of taxation reserved by the Act of June 2, 1920.

Specific reply to the contentions of appellants will be incorporated in our discussion of the foregoing points.

I. THE TWENTY-FIRST AMENDMENT HAS NO APPLICATION IN THIS CASE.

If Yosemite National Park is within the political jurisdiction of California, it is unnecessary for defendants to invoke the Twenty-first Amendment. If Yosemite National

Park is not within the political jurisdiction of California, the Twenty-first Amendment can have no application.

In *State Board of Equalization v. Young's Market Co.*, 299 U. S. 59, it was held that by virtue of the Twenty-first Amendment powers of the states were enlarged in dealing with intoxicating liquors, and many of the limitations in the Commerce Clause and the Fourteenth Amendment were rendered inapplicable to such traffic. There is nothing in that opinion, however, or in the language of the Twenty-first Amendment, that indicates any purpose of the amendment to alter the territorial limits of jurisdiction of the states. In discussing this point the court below aptly said:

> "We are not convinced that the Twenty-First Amendment serves to extend to states a grant of jurisdiction over territories which formerly they could not control. There is nothing in the Amendment to indicate such a purpose, any more than there is to indicate a granting of power to California to tax liquor sales and traffic in Oregon, which clearly would be absurd. Once a state relinquishes its jurisdiction over territory within its limits, its power over that particular land is gone absolutely." (R. 45)

The second paragraph of the Twenty-first Amendment provides:

> "The transportation or importation *into* any state, territory, or possession of the United States for delivery or use *therein* of intoxicating liquors in violation of the laws *thereof*, is hereby prohibited."

In *Standard Oil Co. v. California*, 291 U. S. 242, it was held that the cession by California of jurisdiction

over the Presidio in San Francisco, "put that area beyond the field of operation of her laws," and that "a state cannot legislate effectively concerning matters beyond her jurisdiction and within territory subject only to control by the United States."

In *Western Union Telegraph Co. v. Chiles*, 214 U. S. 274, a state statute imposing a penalty for non-delivery of a telegram was held inapplicable in respect of such failure occurring within a navy yard, the court saying that:

> "* * * the laws of the state * * * cannot be allowed any operation or effect within the limits of the yard."

In *Yellowstone Park Transportation Co. v. Gallatin County*, 31 Fed.(2d) 644, 645, it was said:

> "* * * after the date of cession, the ceded territory was as much without the jurisdiction of the state making the cession as was any other foreign territory, except in so far as jurisdiction was expressly reserved."

Fifty years ago the Supreme Court of Maine had occasion to consider a seizure of intoxicating liquors consigned to a Soldiers' Home, jurisdiction over which had been ceded to the United States. The state laws prohibited the importation "into" the state and the sale "in" the state of such liquor. The seizure was held to be unauthorized, the court saying, in *State v. Intoxicating Liquors*, 6 Atl. 4:

> "The laws of this state do not reach beyond its own territory, and liquors sold in the ceded territory cannot be considered sold in violation of the laws of this state."

In *Foley v. Shriver,* 81 Va. 568, it was held that lands purchased by the United States with the consent of the state are "no longer a part of the State of Virginia."

Rainier National Park Co. v. Martin, 18 Fed. Supp. 481, relied on by appellants (Br. p. 5), involved only the scope of the state taxing act and not the extent of the state's political jurisdiction. In the act of cession the state had reserved certain taxing powers. The tax act applied to transactions "in" or "within" the state, and it was held that the act did not intend to exclude from its scope transactions occurring within the park. The decision has no bearing on the meaning of the term "in" as used in the Twenty-first Amendment, where the extent of the political jurisdiction of the state is the determining factor.

McKesson & Robbins, Inc. v. Collins, 18 Cal. App.(2d) 648, cited by appellants (Br. p. 7) was concerned only with the definition of "export" with reference to shipments from California to ceded areas. It recognizes the exclusive jurisdiction of the United States in such areas, but holds that California wholesalers, as the law then stood, were not authorized to sell liquor to unlicensed persons doing business therein. It is a decision merely on what California wholesalers may do under the act, and has no bearing on the scope of the state's jurisdiction over transactions not involving its licensees. The *Grayburg Oil Co.* cases (cited by appellant in this same connection) were reversed by this Court in 278 U. S. 582. While the basis stated for reversal involved a different point, the conclusion of the Texas courts, in respect of the power of the state over sales made in areas subject to the exclusive jurisdiction of the United States, is directly opposed to the subsequent decision of this Court in *Standard Oil Co. v. California,* 291 U. S. 242.

If appellants' contention that the Twenty-first Amendment empowers the states to regulate the liquor traffic in areas previously ceded to the United States is valid, it is equally so as to areas subject to the terms of Article I, Section 8(17). It would follow that the liquor traffic in the District of Columbia is subject, not to the laws of Congress, but to the laws of Virginia and of Maryland. In Yellowstone National Park, the laws of Wyoming, Montana and Idaho would govern. Such an anomaly is not to be construed into an amendment which did not purport in any way to transfer jurisdiction from the United States.

It is obvious, therefore, that if the cession of jurisdiction over Yosemite National Park from California to the United States was effective, the Park thereafter ceased to be "in" California and that the laws of California ceased to be effective within the limits of the Park. Such being the case, the transportation is not "into" California, the delivery or use of liquor in the Park is not, as to California, for delivery or use "therein," nor is such delivery or use in "violation of the laws thereof." The Twenty-first Amendment, therefore, is clearly inapplicable.

II. THE UNITED STATES HAS CONSTITUTIONAL POWER TO EXERCISE EXCLUSIVE JURISDICTION OVER AREAS DEVOTED TO NATIONAL PARK PURPOSES.

Appellants contend that exclusive jurisdiction may be exercised by the United States only in respect of areas acquired or ceded for one or more of the purposes enumerated in Article I, Section 8(17) of the Constitution, viz., "forts, magazines, arsenals, dock-yards and other needful buildings." It is claimed that this section is the only section of the Constitution empowering the Federal

government to exercise exclusive jurisdiction over any area which has constituted a part of one of the states, and that the enumeration of specific purposes excludes all other purposes. No cases cited by appellants, or known to us, support this contention. The only case to our knowledge, prior to the decision of the lower court herein, expressly considering the point is *Yellowstone Park Transportation Co. v. Gallatin County,* 31 Fed.(2d) 644 (certiorari denied, 280 U. S. 555), where the right of the United States to exercise exclusive jurisdiction over national park areas was sustained.

It has been held that acquisition of jurisdiction under Article I, Section 8(17) is dependent upon three separate elements: (1), purchase, as distinguished from any other mode of acquisition; (2) consent of the legislature, and (3) use of the property for one of the purposes specified in the section. Without the coincidence of all three elements the constitutional section is held not to be applicable. Where, however, these elements coincide, the section becomes effective by its own force. (*Ft. Leavenworth R. R. Co. v. Lowe,* 114 U. S. 525, 538.) It is, however, competent for the State, in granting such consent, to impose conditions and limitations and reserve concurrent jurisdiction (*James v. Dravo Contracting Co.,* U. S. 58 S. Ct. 208).

It is now well established that exclusive jurisdiction may be held and exercised by the United States where the constitutional provision is inapplicable. The leading case is *Ft. Leavenworth R. R. Co. v. Lowe,* 114 U. S. 525, 541, where the court said:

> "In their relation to the general government, the States of the Union stand in a very different position

from that which they hold to foreign governments. Though the jurisdiction and authority of the general government are essentially different from those of the State, they are not those of a different country; and the two, the State and general government, may deal with each other in any way they may deem best to carry out the purposes of the Constitution. It is for the protection and interests of the States, their people and property, as well as for the protection and interests of the people generally of the United States, that forts, arsenals and other buildings for public uses are constructed within the States. As instrumentalities for the execution of the powers of the general government, they are, as already said, exempt from such control of the States as would defeat or impair their use for those purposes; and if, to their more effective use, a cession of legislative authority and political jurisdiction by the State would be desirable, we do not perceive any objection to its grant by the Legislature of the State. Such cession is really as much for the benefit of the State as it is for the benefit of the United States. It is necessarily temporary, to be exercised only so long as the places continue to be used for the public purposes for which the property was acquired or reserved from sale. When they cease to be thus used, the jurisdiction reverts to the State."

In *Chicago, R. I. & P. Ry. Co. v. McGlinn*, 114 U. S. 542, decided on the same day, the court said, with reference to the decision in the *Ft. Leavenworth* case (p. 546):

"We also held, that it is competent for the Legislature of a State to cede exclusive jurisdiction over places needed by the general government in the execution of its powers, the use of the places being, in

fact, as much for the people of the State as for the people of the United States generally, and such jurisdiction necessarily ending when the places cease to be used for those purposes."

See also:

Benson v. United States, 146 U. S. 325;
Arlington Hotel Co. v. Fant, 278 U. S. 439;
United States v. Unzeuta, 281 U. S. 138;
Surplus Trading Co. v. Cook, 281 U. S. 647;
Standard Oil Co. v. California, 291 U. S. 242;
Yellowstone Park Transportation Co. v. Gallatin County, 31 Fed.(2d) 644.

In *People v. Mouse,* 203 Cal. 782, the Supreme Court of California, in upholding the exclusive jurisdiction of the United States over a Soldiers' Home, concluded that the home was a needful building within the meaning of the constitutional provision, but also sustained the exclusive jurisdiction on the further and independent ground, stated at page 786 of the report:

"But under the rule above announced we are not required to rely wholly upon the contention that this institution is a 'needful building,' for under the California statute above quoted, exclusive jurisdiction has been ceded to the United States over all grounds being used for military purposes. If then the institution in question, or the grounds in connection therewith, is being used either as a 'needful building' within the meaning of said section of the Constitution of the United States, or is being used for military purposes within the meaning of said act of the State of California, jurisdiction of the United States is exclusive."

The statute there relied on is the same act of 1897 involved in the *Standard Oil Co.* case, supra, and the jurisdiction ceded was sustained for other than the purposes enumerated in Section 8(17), since "military purposes" extend to far more than "forts, magazines and arsenals" and may not even require the presence of any needful buildings.

New Orleans v. United States, 10 Pet. 660, cited by appellants, holds only that the United States has no political jurisdiction over areas not reserved when a state is admitted to the Union. The statement quoted on page 14 of appellants' brief, is to be read in light of the question there under consideration.

Nikis v. Commonwealth, 131 S. E. 236 (cited on page 14 of appellants' brief) did not involve a cession of jurisdiction at all. The language of the Virginia court, quoted by appellants, was used solely with reference to jurisdiction sought to be sustained under Article I, Section 8(17) of the Constitution. So limited, it is in accord with the decisions of this court. It does not purport to consider the scope of jurisdiction in a case where the State has ceded to the United States exclusive or limited jurisdiction without reference to the constitutional provision. Moreover, the conclusion reached in that case is inconsistent with the holding of this Court in *James v. Dravo Contracting Co.,* U. S. 58 S. Ct. 208, as to the scope of the "needful buildings" clause, and with *Surplus Trading Co. v. Cook,* 281 U. S. 647, as to the immunity from state taxation of private property within a ceded area.

It has been held that jurisdiction acquired by cession from the State is not limited to those areas solely devoted to the purposes enumerated in the Constitution. In *Benson v. United States,* 146 U. S. 325, it was held that such jurisdiction existed in respect of a piece of farming land within the limits of an area ceded for military purposes. In *Arlington Hotel Co. v. Fant,* 278 U. S. 439, such exclusive jurisdiction was applied to a private hotel within a military reservation. The *Ft. Leavenworth* case, supra, involved a railroad right-of-way running through a military reservation, as did also *United States v. Unzeuta,* 281 U. S. 138. *Surplus Trading Co. v. Cook,* 281 U. S. 647, involved private property situated on a military reservation.

Moreover, the phrase "other needful buildings" has been given a liberal construction. It has been applied not only to post offices, soldiers' homes and similar structures, but also to locks and dams. In *James v. Dravo Contracting Co.,* U. S. 58 S. Ct. 208, the court said:

> "We construe the phrase 'other needful buildings' as embracing whatever structures are found to be necessary in the performance of the functions of the federal government."

Within the principle of these cases it would seem that jurisdiction over the national parks might be brought within the "other needful buildings" clause by reason of the existence of the various structures necessary for administration of the parks and accommodation of visitors thereto.

It is unnecessary, however, to go to this length since, it having been established beyond controversy that the

United States is not limited to the *methods* provided by Article I, Section 8(17) in acquiring exclusive jurisdiction, it follows that it is not limited to the *purposes* there enumerated. Application of that section has been held to depend both on methods and purposes, and since the method is not essential to the obtaining of exclusive jurisdiction neither is the purpose.

The acquisition of territory is an inherent power of sovereignty which, unless limited, must necessarily exist in a sovereign. From the inception of our national existence this attribute of sovereignty has been exercised and the national jurisdiction extended over areas acquired by discovery, by conquest and by purchase from other powers. None of that territory was acquired for any of the purposes enumerated in Article I, Section 8(17), and while the source of the power has been the subject of some academic debate, "possession of it is unquestioned" (*American Insurance Co. v. 356 Bales of Cotton*, 1 Peters 511), and that "it exists has always been conceded" (*First National Bank v. Yankton*, 101 U. S. 129).

Not only has such territory been acquired by discovery and from other nations, it has also been acquired by cession from the states. When the Constitution was adopted the federation held the Northwest Territory under cession from various of the original states. Following adoption of the Constitution, the territory now embraced in Tennessee, Mississippi and Alabama was acquired by cession from North Carolina and Georgia without any reference to the purposes enumerated in Section 8(17). See *Alabama v. Georgia*, 64 U. S. 505.

The Constitution recognized the inherent right of the states to acquire or cede territory by prohibiting compacts with another state or a foreign power without the consent of Congress (Art. I, Sec. 10(3)), and by limiting the formation of new states within the jurisdiction of other states and the union of states (Art. IV, Sec. 3(1)). Adjustments of boundaries between states, including mutual relinquishment of sovereignty, have been of frequent occurrence, and in at least one case territory was relinquished by a state to a foreign power with consent of Congress. (See *Ft. Leavenworth R. R. Co. v. Lowe,* 114 U. S. 525, 540.)

In *Pope v. Blanton,* 10 Fed. Supp. 18, the right of a state, with consent of Congress, to expand its boundaries was recognized.

The acquisition and relinquishment of territory being an inherent power of sovereignty, and no express prohibition being found in the Constitution against the exercise of that inherent power by cession from the state to the United States, it follows, as was said by the court in the *Ft. Leavenworth* case (at p. 541) that the State and general governments "may deal with each other in any way they may deem best to carry out the purposes of the Constitution."

The United States has accepted and exercised exclusive jurisdiction over national park areas since 1890. In respect of Yosemite National Park, it has prescribed a complete code of laws for its government (16 U. S. C., Sec. 41 and following). Whether or not the exercise of such power is referable to any of the purposes enumerated in Article I, Sec. 8(17), it is the exercise of an inherent power of sovereignty not prohibited by the Constitution and recognized

as proper in respect not only of discoveries and cession from foreign powers but in respect of cessions from the states themselves, since the inception of our present form of government. It is a political question as to which the court should follow the actions of the political departments (*Benson v. United States,* 146 U. S. 325). The decision of the lower court upholding the constitutionality of the exercise of such jurisdiction is, we submit, correct.

A. The California Constitution does not prevent cession of such jurisdiction.

Appellants rely on Article XIII, Section 6, of the California Constitution, which provides that "the power of taxation shall never be surrendered or suspended by any grant or contract to which the state shall be a party." This same constitutional provision was relied on by the State in petition for rehearing in this court in *Standard Oil Co. v. California,* 291 U. S. 242. Rehearing was denied by this Court. Jurisdiction over the Presidio at San Francisco, involved in the *Standard Oil Co.* case, rests upon an act of cession by the State (Cal. Stats. 1897, p. 51), and not upon Article I, Section 8(17) of the Constitution. The Presidio was not acquired by a purchase but, like Yosemite National Park, was owned by the United States at the time California was admitted to the Union.

An exactly comparable provision of the Montana constitution was invoked in *Yellowstone Park Transportation Co. v. Gallatin County,* 31 Fed.(2d) 644, in which case it was said, at page 645:

> "It is also contended that the act violates section 7 of article 12 of the state Constitution, which declares that the power to tax corporations or corporate prop-

erty shall never be relinquished or suspended. This contention is without merit. If exclusive jurisdiction over that portion of the park in the state of Montana was lawfully ceded to the United States, the cession inured to the benefit of both corporations and individuals, and the power to tax property in the ceded territory, whether corporate or individual, was at an end."

As said by the court below, "defendants have simply misapplied a general rule of state sovereignty to a situation in which the principal issue of territorial jurisdiction controls the right to tax (R. 43).

III. ENFORCEMENT OF THE CALIFORNIA ALCOHOLIC BEVERAGE CONTROL ACT IN YOSEMITE NATIONAL PARK IS NOT WITHIN THE POWER SAVED TO CALIFORNIA BY THE ACT OF JUNE 2, 1920.

Enforcement of the Alcoholic Beverage Control Act of California in Yosemite National Park or in respect of importation of such beverages into the Park from without the State of California is wholly inconsistent with the jurisdiction ceded in 1919, and accepted by the United States by the act of June 2, 1920. There is nothing in the saving clause of the act of cession which permits California to license, regulate and control the liquor traffic in the Park. Such regulation is in derogation of the "exclusive jurisdiction" of the United States.

Apart from the constitutional question discussed in subdivision II of this brief, it can hardly be contended that California has power to regulate the Company's activities in the Park in the manner threatened by appellants. Prior

to the inception of this controversy the Attorney General of California had ruled that the State had no power to require license of persons doing business in the parks and reservations over which jurisdiction had been ceded. The Alcoholic Beverage Control Act itself in Section 6(r) seemingly recognizes this lack of power by permitting licensed wholesalers, under rules of the Board, to sell to non-licensees whose place of business is within ceded areas. If a license is not required it would seem that other regulatory features also fall, either because applicable by their terms only to licensees, or because inconsistent with the ceded jurisdiction. The form of accounts, the hours of closing, the character of employees permitted, the conduct of business both as importer and retailer, are all of this nature.

The act itself (Sec. 1) states that it "shall be deemed an exercise of the police powers of the state." The lower court found that it was primarily regulatory and the California Supreme Court in *Standard Oil Co. v. Johnson,* 95 Cal. Dec. 229, seemingly recognized the validity of this ruling.*

The situation in this respect is precisely similar to *Arlington Hotel Co. v. Fant,* 278 U. S. 439, where state laws enacted after cession were held to be wholly ineffective in ceded territory. In *Standard Oil Co. v. California,* 291 U. S. 242, it was said that the cession "put that area beyond the field of operation of her laws" and that "a state cannot legislate effectively concerning matters beyond her jurisdiction and within territory subject only to control by the United States."

*See Appendix to Appellants' Brief at page 47.

A. The taxing features of the Alcoholic Beverage Control Act a applicable only to persons subject to the police power of Ca fornia and cannot be separated from the regulatory features the Act.

The lower court found that the taxing features of th Alcoholic Beverage Control Act could not be applied apa from the regulatory features, saying:

> "Since the primary purpose of California's ta measure is the regulation of the intoxicating liqu business; since such regulation constitutes an exe cise of the police power which is beyond the jurisdi tion of the State, the measure cannot bestow up California the power to collect license taxes fro plaintiff for the importation and sale of liquors. (R. 50)

It is manifest from the terms of the Act that this ruli is correct. In fact the Act does not even purport to t persons not subject to licensing requirements, and t extent of revenue derived therefrom is immaterial when t Act does not attempt to tax anyone other than licensee As previously mentioned, Section 6(r) of the Act reco nizes the absence of power in the State to require licens from those doing business within ceded areas. While r ferring to retailers, the principle is equally applicable importers. Hence the license fees specified by Section 5 the Act are clearly inapplicable to the Company.

The excise taxes are imposed by Sections 23 and 24 the Act, which respectively provide as follows:

> "Sec. 23. An excise tax is hereby imposed up all beer and wine *sold in this State by a manufactu or importer* * * *." (details of tax omitted)

"Sec. 24. An excise tax is hereby imposed upon all distilled spirits *sold in this State by rectifiers or wholesalers thereof* * * *." (details of tax omitted)

It will be noted that the taxes are levied upon beverages "sold in this State by a manufacturer or importer." As shown by the *Standard Oil Co.* case, supra, and by the other cases cited under Point II hereof, the act of cession removed the ceded territory from the jurisdiction of the state and "put that area beyond the field of operation of her laws." Hence the alcoholic beverages affected by this case are not sold in California and therefore are not within the terms of the act. The litigation is not concerned with beverages purchased from California dealers but relates entirely to such beverages purchased by the Company outside of California and imported directly to the national park. The Company sells such imported beverages only in retail channels. Licensed importers and wholesalers are permitted to sell only to retail licensees (Secs. 6(b), 6(f)) so it is evident that the Company's transactions are not of the character subjected to the tax.

Appellants (Brief, p. 5) rely on *Rainier National Park Co. v. Martin*, 18 Fed. Supp. 481, as holding that the term "in this State" embraces sales within Yosemite National Park. If the case so holds, it is inconsistent with the *Standard Oil Co.* case and others previously cited, where this Court has held that where jurisdiction is ceded to the United States it is effectively removed from the jurisdiction of the State. In *Yellowstone Park Transportation Co. v. Gallatin County*, 31 Fed.(2d) 644, 645, it was said:

"In other words, after the date of cession, the ceded territory was as much without the jurisdiction of the

state making the cession as was any other foreign territory, except in so far as jurisdiction was expressly reserved."

The language used by the court in the *Rainier* case was used solely with relation to the intent of the Washington Legislature to impose an excise tax in respect of transactions occurring within the Rainier National Park, as to which the State by the act of cession had reserved certain taxing powers. Nothing that was said by the court there could be construed to apply to the question of whether the national park was within the police jurisdiction of the State after the cession was accepted by the United States. The question here presented is whether the State competently may require the possession of a license by one importing liquor solely into the national park. Unless such a license is required the Act itself does not purport to tax the transaction.

The tax, moreover, is imposed only on beverages sold in the state *by manufacturer, importer, rectifier or wholesaler*. These terms must be read in conneetion with the statutory definitions (Sec. 2) and the privileges authorized to licensees (Sec. 6). Section 3, prohibiting the exercise of any privilege or performance of any act for which a license is provided unless the person holds the license, and making violation thereof a misdemeanor, further illustrates that the tax imposed by Sections 23 and 24 is imposed only on the transactions of licensed manufacturers, importers, rectifiers and wholesalers. Since no such transactions are interfered with by the injunction in this case, we are unable to see any justification for appellants' threatened acts in the powers of taxation reserved in the 1919 cession.

That the tax imposed by the Act is limited to sales by licensed wholesalers in California is further evident from the provisions of Section 33 prescribing the manner of collection. The section reads:

> "Sec. 33. The tax imposed by section 24 of this act upon the sale of distilled spirits *shall be collected from rectifiers and wholesalers* of distilled spirits and payment of the tax shall be evidenced by stamps issued by the board *to such rectifiers and wholesalers.* In exceptional instances the board may sell such stamps to on- and off-sale distilled spirits licensees and other persons. No rectifier or wholesaler of distilled spirits, shall purchase distilled spirits excise stamps, except from the board or its duly authorized agents, nor dispose of such excise stamps except to on- or off-sale distilled spirits licensees when making sales of distilled spirits to such licensees as provided in section 32b."

Section 33c prescribes that these stamps shall be affixed by retail licensees at the time the cases are opened. Other provisions of the Act show that stamps are provided to be sold only to licensed wholesalers and they alone are responsible to the state for the taxes represented thereby. It seems obvious, therefore, that the taxes imposed by the Act are imposed only on wholesalers whose activities are subject to the licensing powers of California.

The Act (Sec. 6(d)) provides that importers' licenses may be issued only to licensed wholesalers and prohibits importation except by licensed importers (Sec. 49). No fee is provided for an importer's license, nor is any tax imposed on transfer from importer to wholesaler. The importer is not authorized to sell to retailers. The acts of

the company protected by the injunction herein consist entirely in the importation from without the State of California of alcoholic beverages to be sold by it within Yosemite National Park. No tax is specified in the Act for such a type of transaction, and in fact it is prohibited by the Act if performed within California. Unless, therefore, the State has the police power to regulate the manner of importation from without California into the Park, which under the decisions cited it has not, the Act itself does not purpose to impose a tax, and the threats of the Board in this respect are in excess of the jurisdiction given by the statute itself.

It should also be noted that Section 66 of the Act expressly disclaims any purpose to interfere with, regulate or tax alcoholic beverages in transit from points outside the State to other points outside the State. The Company's transactions are all within this express exemption.

It is shown by the bill, and admitted by the motion to dismiss, that interference with the importation by the Company of alcoholic beverages for sale in the Park would prevent performance of the Company's contract with the Secretary of the Interior. It is alleged and admitted that the Secretary has directed the Company not to apply for licenses under the Act and has refused to recognize taxes or license fees as an item of operating expense in the determination of the amounts payable to the government under the Company's contract. The contract shows that the Secretary has final discretion in the determination of proper operating expenses; that the Company is obligated to conform to all rules and regulations promulgated by him, and that he has complete control over the perform-

ance by the Company of its duties under the contract. We have, therefore, a case where the threatened activities of the State directly interfere with the performance by the Company of its duty to the Secretary and the United States. The case, therefore, is wholly dissimilar from *James v. Dravo Contracting Co.*, U. S. 58 S. Ct. 208, *Silas Mason Co. v. Tax Commission*, U. S. 58 S. Ct. 233, and *Atkinson v. State Tax Commission*, U. S. 58 S. Ct. 419, all decided during the current term, where it appeared that the activities of the State did not substantially interfere with performance of the various contracts with the government there involved, and where, in the latter two cases, the contract itself gave recognition to a continuing jurisdiction of the State over the areas on which the contract was to be performed.

The foregoing discussion, while primarily directed to the situation in Yosemite National Park outside Yosemite Valley, is equally applicable to the Valley, irrespective of the more extensive jurisdiction over the Valley ceded to the United States by the 1905 and 1906 acts.

IV. THE UNITED STATES HAS EXCLUSIVE JURISDICTION OVER YOSEMITE VALLEY, WITHOUT ANY RESERVATIONS.

The lower court held that as to Yosemite Valley (the area referred to in the Act of June 11, 1906, 34 Stats. 831), the United States has exclusive jurisdiction by virtue of the California Act of 1891* (Cal. Stats. 1891, p. 262), the

*The 1891 act obviously was meant to cede jurisdiction in areas not subject to Article I, Section 8(17) of the Constitution since Section 33 of the California Political Code, in effect since 1872, gave the consent necessary to bring into play the constitutional jurisdiction.

regrant of the Valley to the United States (Cal. Stats. 1905, p. 54), and its acceptance by the Act of June 11, 1906. This holding is in accord with *Standard Oil Co. v. California*, 291 U. S. 242; *Ft. Leavenworth R. R. Co. v. Lowe*, 114 U. S. 525; *Yellowstone Park Transportation Co. v. Gallatin County*, 31 Fed.(2d) 644, and many other cases.

While acceptance of such a cession of jurisdiction is presumed, as shown in the cases cited, the opinion in *Curtin v. Benson*, 222 U. S. 78, 86, indicates that the United States claimed sovereign rights long prior to 1919. There is nothing in the record herein to detract from the presumption of acceptance, and the case therefore is distinguished from *Silas Mason Co. v. Tax Commission*, U. S. 58 S. Ct. 233, and *Atkinson v. State Tax Commission*, U. S. 58 S. Ct. 419, decided at the present term.* In those cases it appeared that the United States in its contracts recognized the state jurisdiction by requiring the contractor to take out compensation insurance under state law, and otherwise to conform to state laws which would have no effect if jurisdiction were in the United States.

Standard Oil Co. v. Johnson, 95 Cal. Dec. 229, and *Yosemite Park and Curry Co. v. Johnson*, 95 Cal. Dec. 236, are relied on by appellants in opposition to the holding of the lower court. In those cases the Supreme Court of California expressly refused to follow the decision here under review. In those cases, however, the parties are in process of perfecting an appeal to the court, appellee herein being a party to one of those cases.*

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*These opinions are also set forth in the Appendix to Appellants' Brief herein, pp. 33-50.

The Supreme Court of California, by necessary inference, if not directly, concedes that the 1891 and 1905 acts of California and the Act of June 11, 1906, had the effect attributed thereto by the lower court. In its opinion it is said:

> "If the legislative act of recession of 1905, the congressional acceptance thereof, and the related acts prior to that time, were alone to be considered, it might be said that the constitutional question is squarely presented for determination."

The court, however, finds in the 1919 Act of California and the Act of June 2, 1920 (41 Stats. 731) a desire in the state and federal governments to "reframe their agreement to accord with the relative existing rights of the respective sovereigns." The court concludes that its only function "is to recognize and give effect to the act of *recession* of 1919 and the act of acceptance of 1920," that "whatever had taken place before" certain taxing powers were reserved to the state, which it found (erroneously, we claim) to warrant collection of state sales and gasoline taxes on transactions in the Park. It said that the United States might hold a limited jurisdiction for purposes not specified in Article I, Section 8(17) of the Constitution, and that

> "* * * the cases relied upon do not preclude a holding that the extent of such limited jurisdiction for other than the specified purposes may not be *subject of change by mutual agreement* between the state and the United States."

We think it can fairly be deduced from these expressions of the court that it considered that the 1891, 1905

and 1906 acts, above referred to, served to transfer exclusive jurisdiction over the Valley to the United States (subject to constitutional questions), but that the 1919-1920 acts operated to *recede* to California a part of that exclusive jurisdiction so as to empower California to impose excise taxes on certain transactions occurring in the Park.

In this conclusion, we submit, the California Supreme Court erred. While it may be assumed that it would have been competent for the state and federal governments to have bargained in 1919 for a redistribution of governmental powers, and for the United States to recede to California all or a part of its exclusive jurisdiction over Yosemite Valley in return for entire or limited jurisdiction over the rest of Yosemite National Park and over Sequoia and General Grant Parks, there is nothing in the statutes manifesting any such purpose. In *Ryan v. State*, 188 Wash. 115, 61 Pac.(2d) 1276, 1283 (affirmed U. S. , 58 S. Ct. 233), it was said that a surrender of jurisdiction "will not be presumed", that it must be evidenced by "clearly expressed intent" and that the language of surrender must be "clear and unmistakable." This rule is equally applicable to a re-cession by the United States. If followed, the conclusion of the California court is erroneous.

The California Act of 1919 is clearly applicable to a vast area embraced in the three parks, not previously ceded. It shows no intent to reclaim something not then held but merely to "save" certain rights which otherwise would pass by the grant or cession of jurisdiction as to the enlarged area. After ceding exclusive jurisdiction over the three parks it provides:

> "* * * saving further, to the said state, the right to tax persons and corporations, their franchises and property on the lands included in said parks, and the right to fix and collect license fees for fishing in said parks * * *."

This is purely language of exception, not of bargaining, or reclaiming something not then possessed. A saving clause is not apt to create rights. Its function is only to preserve. In *Knickerbocker Ice Co. v. Stewart*, 253 U. S. 149, at p. 262, this court said:

> "The usual function of a saving clause is to preserve something from immediate interference—not to create. * * *"

See also

Surplus Trading Co. v. Cook, 281 U. S. 647,

as to the strict construction of such a saving clause.

The California Act of 1919 was ineffective by itself to alter the existing status. Exclusive jurisdiction then being in the United States, nothing the state could do could impair it (*Yellowstone Park Transportation Co. v. Gallatin County*, 31 Fed.(2d) 644, 646; *In re Ladd*, 74 Fed. 31). The asserted regrant must therefore be found in the terms of the Act of June 2, 1920 (41 Stats. 731). That Act merely accepted the jurisdiction tendered by California, "saving further to the said state" the rights of taxation and licensing powers reserved in the California Act, in *haec verba*. The act of acceptance "*saving*" to the state specific powers cannot be read as a *grant* to the state of powers not held by the state, and not affected by the grant which was being accepted.

Further illustration of the strictness with which a relinquishment of jurisdiction must be viewed is found in *Barnsdall Refineries, Inc. v. Oklahoma Tax Commission*, 41 Pac.(2d) 918, 921, where the Oklahoma court construed a congressional consent to the imposition of certain taxes, saying:

> "* * * we should not create or presume the right to levy and collect one tax because the national government has consented to the levy and collection of another and a different tax."

This Court, in affirming the decision in *Oklahoma v. Barnsdall Refineries, Inc.*, 296 U. S. 521, 526, said:

> "Construing that consent with the strictness appropriate to the interpretation of a waiver of a defined tax immunity of the sovereign, we think the conclusion of the state court was right."

Exclusive jurisdiction having been ceded over the Valley by the 1906 Act, and not relinquished by the 1920 Act, the case is on all fours with *Standard Oil Co. v. California*, 291 U. S. 242, and other cases cited at the beginning of this discussion. California in Yosemite Valley has no governmental powers whatever.

V. IMPOSITION OF THE TAXES LEVIED BY THE ACT IS NOT WITHIN THE SCOPE OF THE POWER OF TAXATION RESERVED BY THE ACT OF JUNE 2, 1920.

The imposition of license fees and the collection of excise taxes on transactions in alcoholic beverages within Yosemite National Park is, we submit, beyond the scope of the taxing power reserved by the 1919 and 1920 acts

of cession. The act of June 2, 1920, after accepting exclusive jurisdiction as tendered by California, saved to the State certain of the powers of taxation as follows:

> "* * * saving further to the said state the right to tax persons and corporations, their franchises and property on the lands included in said parks, and the right to fix and collect license fees for fishing in said parks * * *."

This saving clause was in the same words as those used by the state legislature in its tender of jurisdiction. The extent of the taxing power so saved is the question now presented.

It will be noted that the saving clause did not, as it very well could have done, save to the state its powers of taxation, in which case any exercise of the taxing power would be within the language of reservation. On the contrary it specifically limited the reserved powers to taxation of "persons and corporations, their franchises and property on the lands included in said parks", and further reserved the right to fix and collect license fees for fishing in the parks. The taxes here involved do not fall within any of the reserved powers. Clearly, they are not taxes on corporations, since they apply to individuals, partnerships and associations equally with corporate licensees. No franchise is involved or purported to be taxed. It is not a tax on property, which is otherwise imposed in addition to the excise provided in the Alcoholic Beverage Control Act. We submit that such a tax is not a tax on persons within the scope of the reservation but is merely a tax on the transactions in question.

It is quite logical that the scope of the reserved taxing power intentionally should have been limited. Direct taxes on persons and property are subject to rules of uniformity so that the continued existence of state taxing power in areas ceded to the United States involves little conflict between the state and federal jurisdiction. Excise taxes on transactions, however, even though referable to the taxing power, may be and frequently are imposed in furtherance of some supposed public policy and are aimed at regulation as well as revenue (*St. Louis etc. Co. v. St. Louis,* 249 U. S. 269).

In *State Tax on Foreign-Held Bonds,* 82 U. S. 300, 319, this court clearly established that excise taxes on transactions are generically distinguished from taxes on persons or corporations, saying:

> "The power of taxation, however vast in its character and searching in its extent, is necessarily limited to subjects within the jurisdiction of the State. These subjects are persons, property *and business.* Whatever form taxation may assume, whether as duties, imposts, excises, or licenses, it must relate to one of these subjects."

See also *Beale on Conflict of Laws,* vol. 1, p. 519, *Cooley on Taxation* (4th ed.), Volume 1, p. 172; 26 *Ruling Case Law* 34; *State v. Welsh,* 251 N. W. 189, 202; *City of Santa Barbara v. Stearns,* 54 Cal. 495, 501; *Shaffer v. Carter,* 252 U. S. 37, 52; and *Diefendorf v. Gallet,* 10 Pac.(2d) 307, 312.

In the last case cited the Supreme Court of Idaho said:

> "In its modern sense an excise tax is any tax which does not fall within the classification of a poll

tax or a property tax, and embraces every form of burden *not laid directly upon persons or property.*"

In *Pollock v. Farmers L. & T. Co.*, 158 U. S. 601, 625, this court quoted from *Hamilton*, that:

"Duties, imposts and excises appear to be contra-distinguished from taxes."

The Alcoholic Beverage Control Act, in its title, and in sections 23 and 24, which impose the tax, refer to the tax solely as an "excise".

In *Standard Oil Co. v. Johnson*, 95 Cal. Dec. 229, 235, the Supreme Court of California, discussing the nature of the sales and gasoline taxes there involved, held:

"* * * This language in the statutes will not, of course, be construed to disturb the classification of taxable subjects—persons, property and business (State Tax on Foreign-Held Bonds, 82 U. S. 300, 319; 26 R. C. L., p. 34; 1 Cooley on Taxation, p. 172). Neither does it mean that the excise taxes imposed should be considered as a tax 'on persons' as a subject of taxation. The language of the statutes and the decisions still leaves the sales and gasoline taxes in the category of 'excises' or tax on business."

The Supreme Court of California in that case, however, concluded that the reservation of taxing power which we are now discussing "contemplated the reservation to the State of the general taxing power without any exceptions" and sustained the gasoline and sales taxes as applicable to transactions in Yosemite National Park. It is for that reason that those cases are being appealed to this Court.

The proper interpretation of this reservation is, of course, a federal question (*Silas Mason Co. v. Tax Commission,* U. S. 58 S. Ct. 233), and, we submit, the conclusion of the California Supreme Court in that respect errs in failing to apply the rule that all parts of the statute are to be given effect, and that a saving clause in derogation of a complete grant of power is to be strictly construed. By the act exclusive power and jurisdiction was ceded to the United States saving the enumerated powers of taxation. Only what comes fairly within the language of reservation is to be deemed excepted from the grant (*United States v. Dixon,* 15 Peters 141, 165). It is also fundamental that all words of the statute are to be given effect, and it is not to be assumed that the California legislature and Congress used the elaborate formula which they did if it was intended to reserve the general taxing power which could have been reserved by the simple statement "saving further to the State the power of taxation."

This conclusion is fortified by the terms of numerous other acts of cession recently enacted. In 1935 California tendered jurisdiction over certain lands with the following proviso:

> "provided, further, that the State of California shall retain a concurrent jurisdiction to license or tax persons and corporations and their property and transactions on such lands." (Cal. Stats. 1935, p. 1088)

See, also, Cal. Stats. 1935, p. 1175.

The Act of August 19, 1937 (50 Stats. 700) accepting jurisdiction over Shenandoah National Park from Virginia contains this provision:

> "and saving further to the said State the right to tax sales of gasoline and other motor vehicle fuels and oil for use in motor vehicles,"

following a reservation of the power to tax persons and corporations, etc., in the same language as contained in the Act of June 2, 1920.

While in *Rainier National Park Co. v. Martin,* 18 Fed. Supp. 481, a similarly phrased reservation in the cession by Washington of jurisdiction over Rainier National Park was said to include the entire taxing power, it appears from the opinion that but little attention was given this point and that primary reliance was placed on the supposed immunity of the plaintiff therein as a federal instrumentality. The affirmance of that decision by this Court in a *per curiam* opinion citing only *Mid-Northern Oil Co. v. Walker,* 268 U. S. 45, leads us to believe that the supposed immunity as a government instrumentality was the turning point of the case in this court, and we have therefore undertaken to re-examine the question despite the decision in the *Rainier* case.

Moreover, this case is distinguishable from the *Rainier* case in that the Washington cession did not include the further provision contained in the California cession, adding to the saving clause a reservation of "the right to fix and collect license fees for fishing in said parks." This express reservation of the power to impose one particular type of license fee demonstrates that the legislature of California and Congress did not construe the preceding reservation as adequate to empower the state to collect excises on transactions or privileges. The enumeration of a specific exception necessarily excludes all others (*Sutherland,*

Statutory Construction, Sec. 328). The court below distinguished the *Rainier* case in part upon this ground, and while the Supreme Court of California in *Standard Oil Co. v. Johnson*, 95 Cal. Dec. 229, disagreed with the court below as to the effect of the fishing license clause, we submit, its conclusion was incorrect.

The California Supreme Court treated the fishing license clause as reserving regulatory powers. No such regulatory power was reserved but merely a power to collect a tax from fishermen. It would be wholly inconsistent with the plenary jurisdiction ceded to the United States for California to permit holders of its fishing licenses to fish in the Park contrary to regulations established by the United States. The State has no power to enter the Valley for the purpose of stocking the streams without the consent of the United States. It cannot prescribe the fishing season on a different basis from that established by the United States, and the reservation is purely one for the purpose of collecting the additional revenue derived from the license.

Irrespective of all else that it said, it is apparent from the fishing license reservation that the licensing of liquor dealers and regulation of their business within the Park is wholly beyond the scope of the reserved powers of California.

We submit that the taxes imposed by the Alcoholic Beverage Control Act are as they are stated in the Act, purely excise taxes on transactions; that they are not taxes on persons or corporations, their franchises or property on lands in the Park and are therefore beyond the scope of the reserved taxing powers of California under

the 1919 and 1920 acts, and that this conclusion is fortified and this case distinguished from the *Rainier National Park Co.* case by the further provision in the California statutes, not found in the Washington statutes, specifically reserving to the state the power to fix and collect license fees for fishing,—a reservation which implies that similar taxes are not within the scope of the previously reserved power and which are of comparable character to the taxes here involved. Since only the specifically enumerated fishing license tax was reserved, it follows that other excise taxes were not reserved and that the taxes here in question are not authorized to be imposed by California under the saving clause of the acts ceding and accepting jurisdiction.

If, as a matter of policy, it is deemed appropriate that the states be permitted to impose taxes of this type, it is a simple matter for Congress to grant such powers in the areas subject to the exclusive jurisdiction of the United States. This has been done with respect of gasoline taxes and workmen's compensation laws. This, however, is a matter of congressional discretion. No consideration of policy or revenue needs of the states can avail to detract from the jurisdiction voluntarily granted by the state and accepted by the United States. The saving clause in derogation of the grant of plenary jurisdiction is to be strictly construed, and all its language given effect. If this be done it cannot be said to extend to taxes on transactions. Such taxes are not on persons, corporations, franchises or property and therefore are beyond the scope of the reserved power.

CONCLUSION.

We respectfully submit

(1) That the Twenty-first Amendment to the Constitution has no application in this case;

(2) That the United States has inherent power to accept and exercise exclusive jurisdiction over areas ceded by the states, or otherwise acquired, and used for national park purposes;

(3) That there is no restraint in the Constitution of the United States or the Constitution of California on the inherent sovereign power of California to cede territory to the United States;

(4) That such jurisdiction as depends on cession from a state to the United States is not limited to the purposes enumerated in Article I, Section 8(17) of the Constitution, that section operating merely as an automatic transfer of jurisdiction when its conditions are fulfilled and not as the sole basis of jurisdiction, either as to *methods* or *purposes*.

(5) That exclusive jurisdiction over Yosemite Valley without reservation of any police or taxing powers to California was ceded by virtue of the regrant of the Valley in 1905 and its acceptance by the Act of June 11, 1906, coupled with the 1891 cession of jurisdiction by California;

(6) That as to the remainder of Yosemite National Park, and irrespective of the preceding point to the Valley as well, the jurisdiction ceded to the United States by the 1919 Act, accepted by the Act of June 2, 1920, is such that California has no power to license, regulate or control the Company's transactions in alcoholic beverages within the Park pursuant to its contract with the Secretary of the Interior;

(7) That interference by the State, as threatened, with the Company's property in the Park and in course of transit thereto from points outside of California would interfere with and prevent performance by the Company of its contract with the Secretary of the Interior;

(8) That the taxing features of the Alcoholic Beverage Control Act of California are directed solely to the subjects of its licensing requirements, that they are not by the statute made applicable to the Company's operations, and may not be separately sustained in the absence of power to license and regulate the transactions in respect of which the excise is imposed;

(9) That excise taxes of this character are beyond the scope of the power of taxation reserved to California by the 1919 and 1920 acts;

(10) That the decision of the lower court is correct and should be affirmed.

Respectfully submitted,

HERMAN PHLEGER,
MAURICE E. HARRISON,
GREGORY A. HARRISON,
JAMES S. MOORE, JR.,

Attorneys for Appellee.

BROBECK, PHLEGER & HARRISON,
Of Counsel.

(APPENDIX FOLLOWS)

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APPENDIX.

CAL. STATS. 1905, p. 54:

An act to re-cede and re-grant unto the United States of America, the "Yosemite Valley," and the land embracing the "Mariposa Big Tree Grove."

(Approved March 3, 1905.)

The people of the State of California, represented in senate and assembly, do enact as follows:

Section 1. The State of California does hereby re-cede and re-grant unto the United States of America, the "Cleft" or "Gorge" in the granite peak of the Sierra Nevada mountains, situated in the county of Mariposa, State of California, and the headwaters of the Merced River, and known as the Yosemite Valley, with its branches or spurs, granted unto the State of California in trust for public use, resort and recreation by the act of Congress entitled "An act authorizing a grant to the State of California of the Yosemite Valley and of the land embracing the 'Mariposa Big Tree Grove,'" approved June 30th, 1864; and the State of California does hereby relinquish unto the United States of America and resign the trusts created and granted by the said act of congress.

Sec. 2. The State of California does hereby re-cede and re-grant unto the United States of America, the tracts embracing what is known as the "Mariposa Big Tree Grove," granted unto the State of California in trust for public use, resort and recreation by the act of congress referred to in section 1 of this act; and the State of California does hereby relinquish unto the United States of

America and resign the trusts created and granted by the said act of congress.

Sec. 3. This act shall take effect from and after acceptance by the United States of America of the re-cessions and re-grants herein made, thereby forever releasing the State of California from further cost of maintaining the said premises, the same to be held for all time by the United States of America for public use, resort and recreation, and imposing on the United States of America the cost of maintaining the same as a national park. *Provided, however,* that the re-cession and re-grant hereby made shall not affect vested rights and interests of third persons.

ACT OF JUNE 11, 1906 (34 STATS. 831, SECTION 1):

RESOLVED by the Senate and House of Representatives of the United States of America in Congress assembled, That the recession and regranting unto the United States by the State of California of the cleft or gorge in the granite peak of the Sierra Nevada Mountains, situated in the county of Mariposa, State of California, and the headwaters of the Merced River, and known as the Yosemite Valley, with its branches or spurs, granted unto the State of California in trust for public use, resort, and recreation by the Act of Congress entitled "An Act authorizing a grant to the State of California of the Yosemite Valley and of the land embracing the Mariposa Big Tree Grove," approved June thirtieth, eighteen hundred and sixty-four (Thirteenth Statutes, page three hundred and twenty-five), as well as the tracts embracing what is known as the "Mariposa Big Tree Grove," likewise granted unto the State of California by the aforesaid Act of Congress, is

hereby ratified and accepted, and the tracts of land embracing the Yosemite Valley and the Mariposa Big Tree Grove, as described in the Act of Congress approved June thirtieth, eighteen hundred and sixty-four, together with that part of fractional sections five and six, township five south, range twenty-two east, Mount Diablo meridian, California, lying south of the South Fork of Merced River and almost wholly between the Mariposa Big Tree Grove and the present south boundary of the Yosemite National Park, be, and the same are hereby, reserved and withdrawn from settlement, occupancy, or sale under the laws of the United States and set apart as reserved forest lands, subject to all the limitations, conditions, and provisions of the Act of Congress approved October first, eighteen hundred and ninety, entitled "An Act to set apart certain tracts of land in the State of California as forest reservations," as well as the limitations, conditions, and provisions of the Act of Congress approved February seventh, nineteen hundred and five, entitled "An Act to exclude from the Yosemite National Park, California, certain lands therein described, and to attach and include the said lands in the Sierra Forest Reserve," and shall hereafter form a part of the Yosemite National Park.

CAL. STATS. 1891, p. 262:

An Act ceding to the United States of America jurisdiction over lands in this State ceded to the United States.

(Approved March 31, 1891.)

The People of the State of California, represented in Senate and Assembly, do enact as follows:

Section 1. The State of California hereby cedes to the United States of America exclusive jurisdiction over such piece or parcel of land as may have been or may be hereafter ceded or conveyed to the United States, during the time the United States shall be or remain the owner thereof, for all purposes except the administration of the criminal laws of this State and the service of civil process therein.

Sec. 2. This Act shall take effect immediately.

CAL. STATS. 1919, p. 74:

An act to cede to the United States exclusive jurisdiction over Yosemite national park, Sequoia national park, and General Grant national park in the State of California.

(Approved April 15, 1919. In effect July 22, 1919.)

The people of the State of California do enact as follows:

Section 1. Exclusive jurisdiction shall be and the same is hereby ceded to the United States over and within all of the territory which is now or may hereafter be included in those several tracts of land in the State of California set aside and dedicated for park purposes by the United States as "Yosemite national park," "Sequoia national park," and "General Grant national park" re-

spectively; saving, however, to the State of California the right to serve civil or criminal process within the limits of the aforesaid parks in suits or prosecutions for or on account of rights acquired, obligations incurred or crimes committed in said state outside of said parks; and saving further, to the said state the right to tax persons and corporations, their franchises and property on the lands included in said parks, and the right to fix and collect license fees for fishing in said parks; and saving also to the persons residing in any of said parks now or hereafter the right to vote at all elections held within the county or counties in which said parks are situate; *provided, however,* that jurisdiction shall not vest until the United States through the proper officer notifies the State of California that they assume police jurisdiction over said parks.

SECTION 1 OF THE ACT OF JUNE 2, 1920 (41 STATS. 731):

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the act of the Legislature of the State of California (approved April 15, 1919), ceding to the United States exclusive jurisdiction over the territory embraced and included within Yosemite National Park, Sequoia National Park, and General Grant National Park, respectively, are hereby accepted and sole and exclusive jurisdiction is hereby assumed by the United States over such territory, saving, however, to the said State of California the right to serve civil or criminal process within the limits of the aforesaid parks or either of them in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed in said State outside of said parks; and saving further to the said

State the right to tax persons and corporations, their franchises and property on the lands included in said parks, and the right to fix and collect license fees for fishing in said parks; and saving also to the persons residing in any of said parks now or hereafter the right to vote at all elections held within the county or counties in which said parks are situated. All the laws applicable to places under sole and exclusive jurisdiction of the United States shall have force and effect in said parks or either of them. All fugitives from justice taking refuge in said parks, or either of them, shall be subject to the same laws as refugees from justice found in the State of California.

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